

IN THE MATTER OF LICENSE NO. 372482 MERCHANT MARINER'S DOCUMENT  
AND ALL OTHER SEAMAN'S DOCUMENTS NO. Z-1058910  
Issued to: Christopher George TREVOR

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1883

Christopher George TREVOR

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1

By order dated 26 March 1971, an Examiner of the United States Coast Guard at Duluth, Minn., suspended Appellant's seaman's documents for three months out-right plus two months on six months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as third mate on board SS KINSMAN VOYAGER under authority of the document and license above captioned, on or about 3 August 1970, Appellant:

- (1) used abusive language to the master, and chief mate;
- (2) continued to disobey a lawful order of the master; and
- (3) created a disturbance because of intoxication

At the hearing, appellant did not appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage record of KINSMAN VOYAGER and the testimony of a witness.

Since Appellant did not appear for hearing there was no defense, but Appellant submitted a letter attacking the credibility of his "assailants."

Seven months after the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months outright plus two months on six months' probation.

The entire decision was served on 7 April 1971. Appeal was timely filed on 23 April 1971.

FINDINGS OF FACT

On 3 August 1970, Appellant was serving as a third mate on board SS KINSMAN VOYAGER and acting under authority of his license and document while the ship was in Lake Huron.

On that date, at about 2000, Appellant came to the bridge to assume the watch. He was intoxicated and created a disturbance by throwing the master's jacket on the radar console, shouting, and hurling abusive language at the master and chief mate. Four or five times the master ordered Appellant to leave the bridge and go to his room. Appellant refused to do so.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the log entry used in this case was not made in compliance with law, that the witness who testified was prejudiced, and that it was unfair to time the suspension ordered to fit the opening of the navigation season on the Great Lakes.

APPEARANCE: Appellant, pro se.

#### OPINION

##### I

The question raised by Appellant as to the log entry presents no serious question. It is true that the log entry was made on the second day after the events recounted. However, I need not enter upon a discussion of the possible effect of the relationship between 46 U.S.C. 201 and 46 U.S.C. 701-702, and a log book not required by law to be maintained aboard the vessel, because the Examiner clearly stated that he was not relying on the log entry alone for his findings but rather on the testimony of the one witness who appeared, and eyewitness.

##### II

Appellant challenges the reliability of the testimony of the witness on the grounds that as an employee aboard the vessel the witness was inherently prejudiced by self-interest. If there were any foundation for this, the matter should have been explored at hearing on cross-examination. Appellant waived his right to cross-examination of the witness by failing to appear for the hearing of which he was given proper notice, and may not attack credibility for the first time on appeal. I add that the testimony of the witness has an inherent appearance of reliability, such that the Examiner's reliance upon it cannot be contested as reliance upon inherently unbelievable testimony.

### III

With respect to the effect of the Examiner's order on the employment season of a seaman, I must say first that I have already approved orders of an examiner tailored to fit seasonal occupation. (See Decisions on Appeal Nos. 1792 and 1793.) Such orders, while admittedly requiring precision of writing, precision absent in the two cases cited, are difficult to write. Appellant's argument here is not, however, that the order was tailored to affect him during the season when the Great Lakes are open for traffic but that a delay in the uttering of the Examiner's decision resulted in effectiveness of the suspension ordered during the season when the Great Lakes were open to navigation.

I want to make it clear here that what Appellant complains of is not a tailoring of an Examiner's order to fit operational activities but a failure to enter a decision and order in timely fashion. I am inclined to sympathize with Appellant's contention.

Even if an order is properly tailored to effect a suspension during an operational period, whether on the Great Lakes or on "party-boat" operation, the person is entitled to a decision on his case and an utterance of this decision irrespective of the date of its effectiveness. The possibility of appeal must also be considered. (See Decisions on Appeal Nos. 1792 and 1793.) To delay a decision in order to effectuate a suspension during an operational period is not a proper means to deal with the problem.

In the instant case it so happens that Appellant complied with the Examiner's order on 14 April 1971, and did not request a temporary license and document pending disposition of his appeal. Thus the question of the outright suspension in the Examiner order has been mooted. The suspension order has already been served and Appellant presumably has his license back in his possession. The only question left is whether affirmance of the Examiner's order, containing probationary provisions, is equitable. I think it is not.

Had the Examiner issued his order in timely fashion and tailored it to fit the working period of a Great Lakes seaman, I would entertain no complaint, because Appellant would have had opportunity to have his appeal decided before the order became effective. What Appellant complains of in this case is that the Examiner issued no order at all for an unreasonable time such that it unexpectedly hit Appellant at the beginning of the season of navigation on the Great Lakes.

Appellant has much in his favor here. The hearing was held on 26 August 1970. the hearing was held in absentia; thus there was

no contest as to the evidence. It took the Examiner until 26 March 1971 to arrive at a decision in the case. There is not a suggestion in the record as to why this delay of seven months occurred. If the Examiner believed that delay in decision would effectuate a suspension during a period when Appellant's employment might be affected he chose the wrong method to do so. Proper wording of the order would have done that. On the other hand, if the delay in entry of the decision and order had nothing to do with the navigational season on the Great Lakes, in the absence of any explanation therefor in an uncontested case, I can see no reason for a gap of seven months between the completion of taking of evidence and the entry of decision.

Since Appellant has already served his outright suspension that part of the order has been mooted. Appellant is entitled to some relief.

#### IV

Two comments must be made on the specification found proved to the effect that on 5 August 1970 Appellant did "wrongfully continue to disobey a lawful order of the master." Since no other order and no other disobedience is mentioned in any other specification, it is apparent that this specification is inartfully drawn. One cannot continue to disobey an order not otherwise specified. From the entire record, however, it is clear that what was meant was that Appellant, having once been ordered to leave the bridge and go to his quarters, did not do so and failed to do so after three or more repeated orders.

If Appellant had been present at the hearing I would have no difficulty in affirming the Examiner's findings. Under the present posture of the case I must, however, find the specification fatally defective in alleging only that Appellant "continued to disobey" and order of the master.

When disobedience of an order is the basis of a specification of misconduct it seems that the order should properly be spelled out. In a contested case a defective specification may be cured by open litigation of the matter which does identify the order disobeyed or the granting of motion for appropriate relief. Fundamentally, nevertheless, it is not enough for the specification to allege only that a person disobeyed and order.

Under the circumstances of this case I need not enter here upon a refined distinction between:

- (1) continued disobedience of repetitions of the same order, and

(2) continuing disobedience of an order as distinct from a series of individual disobedience of wearied individual orders,

but the matter is worthy of attention by interested persons.

#### CONCLUSION

It was argued by the Investigating Officer at the hearing that the table at 46 CFR 137.20-165 specifies a six month suspension for "continued disobedience of lawful order." The Examiner recognized this but stated his belief that Appellant's clear prior record merited consideration. Appellant has already served the three month outright suspension. For two reasons the order of the Examiner should be modified: (1) the unexplained delay in issuance of a decision such as to suspend Appellant's license at the beginning of the next navigational season on the Lakes, and (2) the disapproval of the failure to obey orders specification. The order will be modified to eliminate the otherwise remaining suspension on probation.

#### ORDER

The specification alleging continued disobedience of orders is DISMISSED. The Examiner's findings as to the other specifications found proved are AFFIRMED. The order of the Examiner is MODIFIED to provide only for a suspension of three months without more.

C.R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D.C., this 30th day of June 1972

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